

Respectfully submitted,

/s/ Travis Gasper

J. DEREK BRAZIEL

Co-Attorney in Charge

Texas Bar No. 00793380

jdbraziel@l-b-law.com

TRAVIS GASPER

Texas Bar No. 24096881

gasper@l-b-law.com

Lee & Braziel, L.L.P.

1801 N. Lamar Street, Suite 325

Dallas, Texas 75202

(214) 749-1400 phone

(214) 749-1010 fax

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record through the Court's ECF system as of the date file-stamped thereon.

/s/ Travis Gasper

TRAVIS GASPER

litigation,”¹ and Defendants’ failure to produce documents “regarding correspondence and other documents sent to or received from the Department of Labor (“DOL”) concerning any investigation of Defendants.”²

4. The discovery responses and documents at issue in the motion to compel may directly support Plaintiff’s allegations and refute Defendants’ defenses, and therefore would serve to create a genuine issue of material fact sufficient to oppose and defeat Defendants’ Motion for Summary Judgment, including without limitation the following facts:

- a. Whether the DOL found Defendants properly classified Plaintiff and employees in similarly positions as exempt or non-exempt from overtime under the FLSA;
- b. Reasons why the DOL allegedly found some of Defendants’ employees non-exempt from the FLSA’s overtime protection (like Plaintiff);
- c. Job descriptions for current and former Customer Service Representatives (“CSRs”) like Plaintiff; and
- d. Names and contact information for Defendants’ employees with knowledge of the relevant facts relating to the subject matter of this litigation, including employees who participated in the DOL investigation.

5. For the reasons set forth in Plaintiff’s motion to compel (Doc. 39), Plaintiff has not delayed in pursuing or obtaining the discovery outlined above.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: November 6, 2018.


Travis Gasper

¹ Doc. 39 at 2-3.

² Doc. 39 at 5.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**CHERYL CALDWELL, Individually and
on Behalf of All Others Similarly Situated,**

Plaintiff,

V.

**REO CONTRACTORS, INC., KINDALE
PITTMAN, individually, and HOLLY
KIRK, individually,**

Defendants.

Civil Action No. 3:17-cv-1552-C

Jury Demanded

DECLARATION OF CHERYL CALDWELL

I am over the age of 18, am competent to testify to the following from my personal experience and knowledge, and declare as follows:

1. Defendants REO Contractors, Inc., Kindale Pittman, and Holly Kirk (collectively, “REO” or “Defendants”) employed me as a Customer Service Representative (“CSR”) from approximately July 9, 2009, to approximately July 13, 2016.
2. I was paid on a salary basis of at least \$455.00 per week.
3. As a CSR, primary duty was the performing routine clerical and non-manual tasks, such as taking direction from management, quality assurance inspectors, and field superintendents; typing up summaries of work to be performed based on that information; updating notes and files; and answering phones.
4. As a CSR, I had minimal or no discretion on how to perform my job because every significant aspect of my job was covered by REO-implemented policies and procedures I was

required to follow. I did not have the authority to formulate, affect, interpret, or implement management policies or operating practices. I did not carry out major assignments in conducting the operation of the business. I did not perform work that affected business operations to a substantial degree. I did not have the authority to commit Defendants in matters that have significant financial impact. I did not have the authority to waive or deviate from established policies and procedures without prior approval. I did not have authority to negotiate and bind the company on significant matters. I did not provide consultation or expert advice to management. I was not involved in planning long- or short-term business objectives. I did not investigate and/or resolve matters of significance on behalf of management. I did not represent the company in handling complaints, arbitrating disputes, or resolving grievances.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 11/7/2018 _____.

DocuSigned by:

C465AC9A13024CD
Cheryl Caldwell

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHERYL CALDWELL,)
individually and on Behalf)
Of All Others Similarly)
Situated,)
Plaintiff,)
VS.) CASE NO.: 3:17-cv-1552
REO CONTRACTORS, INC.,)
KINDALE PITTMAN,)
individually, and HOLLY)
KIRK, individually,)
Defendants.)

ORAL AND VIDEOTAPED DEPOSITION OF
CHERYL CALDWELL
SEPTEMBER 28, 2018

ORAL AND VIDEOTAPED DEPOSITION OF CHERYL
CALDWELL, produced as a witness at the instance of the
Defendants, and duly sworn, was taken in the
above-styled and numbered cause on September 28, 2018,
from 1:44 p.m. to 5:09 p.m., before Ashley Gattenby,
CSR, RPR in and for the State of Texas, reported by
machine shorthand, at Clark Firm, PLLC, 10000 North
Central Expressway, Suite 400, Dallas, Texas 75231,
pursuant to the Federal Rules of Civil Procedure.

A P P E A R A N C E S

FOR THE PLAINTIFF:

Mr. Travis Gasper
LEE & BRAZIEL, LLP
1801 North Lamar Street, Suite 325
Dallas, Texas 75202
(214)749-1400
(214)749-1010 Fax
gasper@l-b-law.com

FOR THE DEFENDANT:

Mr. Steven E. Clark
CLARK FIRM, PLLC
10000 North Central Expressway, Suite 400
Dallas, Texas 75231
(214)890-4066
(214)890-4013 Fax
sclark@dfwlaborlaw.com

ALSO PRESENT:

Holly Kirk
Holland Hendley
Jonathan Muriel (enters page 35)
David Guerra, Videographer

1 A. I did.

2 Q. Okay. And you heard Ms. Kirk, I'm trying to
3 shorten things, talk about there were -- as I understand
4 it there were year-end bonuses and then there were
5 bonuses that were paid over the holidays; is that
6 consistent with your memory?

7 A. Yes. When I started, they were supposed to be
8 quarterly bonuses, but then they ended up being yearly
9 bonuses.

10 Q. Okay. So it changed?

11 A. Uh-huh.

12 Q. So can you describe for me what additional
13 responsibilities you took on under the title of CSR over
14 the course of the eight years you were there, I guess?

15 A. Additional responsibilities, I mean, the
16 customer service duties that I did. I mean, they didn't
17 really change that much. I mean, they had a set
18 procedure that we followed.

19 Q. Okay.

20 A. I mean, additional responsibilities I took on,
21 I mean, I sort of coordinated appliances, you know, but,
22 I mean, I still had to have somebody approve anything
23 that I ordered.

24 Q. Did you have authority to order anything up to
25 a certain amount?

1 A. No.

2 Q. So everything had to be approved?

3 A. Uh-huh.

4 Q. Who was your point of approval?

5 A. Well, the bid person did the bid and then
6 Kelvin would have to approve whatever it was that was
7 being actually being ordered.

8 Q. Kelvin?

9 A. Kelvin.

10 Q. Well, do you know Kelvin's last name?

11 A. Chochi (phonetic).

12 Q. Just so we have the right people.

13 A. Yeah.

14 Q. Let's go ahead and mark this.

15 (Exhibit No. 5 marked.)

16 Q. This is a document that came out of your
17 personnel files, and it said CSR job description.

18 A. Okay.

19 Q. So, first of all, let me just ask you, do you
20 recognize the document?

21 A. Okay. Yes.

22 Q. All right. Can you identify it?

23 A. It looks like something that I might have
24 written as my job description to her.

25 Q. Okay. This is not dated. Looking at it at

1 A. Yeah.

2 Q. So when you put Exhibit 6 together, this was
3 sort of a training guide, if you will?

4 A. It was basically just so that it made the
5 policies and procedures easier to follow because we had
6 a lot of things that we had to do that were, you know,
7 required.

8 Q. Okay.

9 A. Like in our portals and stuff, so this just
10 made it easier to follow, to make sure you got every
11 single thing done.

12 Q. Okay. Were you asked to prepare this?

13 A. No.

14 Q. So this was something you took upon yourself?

15 A. Yes.

16 Q. And did -- was it distributed to the other
17 people?

18 A. No.

19 Q. All right. So after you prepared it, what did
20 you do with it?

21 A. I gave it to Kindale.

22 Q. Kindale. Okay. How did Kindale respond?

23 A. He liked it.

24 Q. All right. Anything -- anything else, did he
25 say share it with other people?

1 A. No, he liked it and then he put it away, and
2 it was -- I got the feeling that it wasn't just supposed
3 to be around.

4 Q. Why?

5 A. I don't know. Holly didn't like it.

6 Q. What?

7 A. Holly didn't like it.

8 Q. Okay. You had a conversation with her about
9 it?

10 A. I just got -- I had a conversation with
11 Kindale, and I don't know if Holly and I ever really
12 talked about it, but, I mean, it just kind of went away.
13 I used it still for my own person -- when I trained
14 people, I used it.

15 Q. Okay. All right. And if we -- I'm not going
16 to spend the time unless we need to, but generally
17 speaking, does this, kind of, describe on a day in, day
18 out basis what you were doing as a CSR?

19 A. Yes.

20 Q. Is that a pretty fair statement?

21 A. Yes.

22 Q. And you think all of this -- all these
23 descriptions of what you did, you were only a clerical
24 employee?

25 A. Yes.

1 Q. So your belief is that everything in here is
2 just clerical duties?

3 A. Yes.

4 Q. Did you ever have to exercise any judgment to
5 perform any of your job duties?

6 A. Judgment?

7 Q. Yeah. Make decisions.

8 A. I mean, everything was pretty much to form.
9 There was a policy or procedure for everything I did.

10 Q. Okay.

11 A. So there wasn't a whole lot of judgment
12 involved.

13 Q. Was there any judgment involved?

14 A. Well, sure.

15 Q. Okay. Can you tell me types of judgment that
16 you had to make on a daily basis?

17 A. Let me think about it. Well, rephrase your
18 question, if you don't mind.

19 Q. Sure. Whether this is helpful or from your
20 own memory, can you tell me the type of judgments you
21 would have to make in performing your job duties as a
22 CSR at REO?

23 A. I suppose like if there was things that was
24 missing I would have to make a judgment whether or not
25 we were going to send it to Kindale for approval or not

1 to do extra things.

2 Q. Okay. Would you have to decide what needed to
3 be ordered on given projects that you were working with?

4 A. No.

5 Q. Who made those decisions?

6 A. It was already on the bid, approved bid.

7 Q. Okay. Was there any discretion at all in
8 terms of how many got ordered or who you ordered from
9 or --

10 A. Who we ordered from.

11 Q. Or how much we paid for it?

12 A. Who we ordered from was more like a judgment,
13 but, I mean, like, I would have to use my judgment to go
14 out and find people that, you know, were reputable or
15 whatever and bring them back to Kindale so he could
16 approve them.

17 Q. Okay.

18 A. I mean, that's not really a judgment call, I
19 wouldn't think. I don't know.

20 Q. All right. Anything else that you can think
21 of?

22 A. No.

23 Q. There's another term called "discretion." Do
24 you feel like you had any discretion in performing your
25 job duties?

1 A. No.

2 Q. Everything was just rote tasks?

3 A. Yes.

4 Q. No real thinking involved; is that correct?

5 A. Everything was policy and procedures, not
6 thinking --

7 Q. I understand. Every company has policies and
8 procedures, and all the employees are expected to follow
9 policies and procedures --

10 A. Right.

11 Q. -- correct? And if they don't, the company
12 generally gets rid of them, right?

13 A. Yes.

14 Q. So you understood over the course of working
15 there for eight years what the policies and procedures
16 were, correct?

17 A. They changed all the time.

18 Q. Right. But you kept up with them and you
19 performed well?

20 A. Yes.

21 Q. And you were paid well?

22 A. Yes.

23 Q. So what -- but what I'm trying to figure out
24 is did you have any discretion, or were you just
25 performing the same tasks spelled out for you, you know,

1 A. It was a routine task that I did. I did it
2 frequently.

3 Q. Right. But as far as -- it was an important
4 task --

5 A. Yes.

6 Q. -- that actually affected the bottom line for
7 the company, right?

8 A. It affected the bottom line for the company?
9 I mean, I don't know what you mean by that exactly.

10 Q. Well, I mean, let's back up to the beginning
11 of the bullet. I've managed 600 jobs or projects, would
12 represent approximately \$5 million in sales, right?

13 A. Yes.

14 Q. So that's a significant amount of money?

15 A. Yes.

16 Q. When I talk about the bottom line --

17 A. Right.

18 Q. -- that's --

19 A. Okay.

20 Q. -- what we're talking about.

21 A. Yes.

22 Q. Okay. And so the type of work you did
23 impacted the bottom line, didn't it?

24 A. I was taking a document that was on a bid, and
25 I was just putting it on another document. I was just,

1 basically, taking the words from the bid and putting it
2 on a document that the guys worked off of.

3 Q. Right.

4 A. So I was, basically, taking one document and
5 putting it onto another document.

6 Q. But you had to put it onto a document so the
7 workers could easily understand it --

8 A. Right.

9 Q. -- and undertake the repairs within the scope
10 of the work to be performed, right?

11 A. Yes.

12 Q. For each job?

13 A. Yes, and it was, basically, just one document
14 that was approved, putting it on another document for
15 the guys -- a list so they could work off of it.

16 Q. All right. And would you interact with the
17 guys on each of these recaps once you prepared them?

18 A. Yes.

19 Q. So that was part of your job as well, wasn't
20 it?

21 A. Well, once the recap was done, it was done.

22 Q. Right. But you have -- that wasn't the end of
23 your involvement with them, once the recap was done, was
24 it?

25 A. No.

1 A. For sure.

2 Q. Okay. Next bullet is that you worked closely
3 as a team liaison between field superintendents and QC
4 personnel. Is that accurate?

5 A. Yes.

6 Q. To schedule tasks, coordinate subcontractor
7 repairs, purchase material and ensure deliveries so that
8 each project's repairs and inspections were timely
9 completed and deadlines met?

10 A. Yes. Let me interject here. When I say to
11 schedule stuff, I only scheduled what the guys told me
12 to schedule.

13 Q. Okay.

14 A. When they wanted it.

15 Q. But when you wrote this, you were accurately
16 trying to describe what you did to help the company --

17 A. Yes.

18 Q. -- in performing your job duties, right?

19 A. But I had boundaries.

20 Q. Everybody has boundaries, right?

21 A. Okay. Right.

22 Q. Except maybe the owner?

23 A. Right.

24 Q. But you were trying to expand your boundaries;
25 isn't that a fair statement?

1 Q. But you're the one who used the phrase, took
2 on additional responsibilities?

3 A. Yes, I --

4 Q. That's what I'm trying to find out is what
5 were those additional responsibilities?

6 A. Well, anytime that somebody was laid off, I
7 took on part of their duties, whatever it was.

8 Q. Okay.

9 A. You know, whether it be phones, whether it
10 be -- I can't even remember now, but anytime somebody
11 got laid off it was the CSRs that absorbed their jobs.

12 Q. Okay. So you were doing a lot more at the end
13 as a CSR than you were at the beginning; isn't that
14 true?

15 A. As in any job, yes.

16 Q. Okay. And you thought a more accurate way to
17 describe the way you were effectively functioning at the
18 end of your job was as a project coordinator; is that
19 true?

20 A. I did a lot of customer service, too, but I
21 did project coordination, too, yes.

22 Q. Okay.

23 MR. CLARK: Do you want to take a short
24 break?

25 THE WITNESS: I'm good.

Holly Jo Kirk 9/27/2018

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHERYL CALDWELL, *
INDIVIDUALLY AND ON *
BEHALF OF ALL OTHERS *
SIMILARLY SITUATED *
PLAINTIFF, *
VS. * NO. 3:17-cv-1552-C
REO CONTRACTORS, INC., *
KINDALE PITTMAN, *
INDIVIDUALLY, AND HOLLY *
KIRK, INDIVIDUALLY *
DEFENDANTS. *

ORAL DEPOSITION OF
HOLLY JO KIRK
SEPTEMBER 27, 2018

Holly Jo Kirk 9/27/2018

1 ANSWERS AND DEPOSITION of HOLLY JO KIRK, a
2 witness produced on behalf of the Plaintiff, taken in
3 the above styled and numbered cause on the 27th day of
4 September, 2018, from 9:38 a.m. to 3:32 p.m. before
5 Kathy Bradford, a Certified Court Reporter in and for
6 the State of Texas, taken in the offices of Clark
7 Firm, PLLC, 10000 North Central Expressway, Suite 400,
8 City of Dallas, County of Dallas, State of Texas, in
9 accordance with the Federal Rules.

Holly Jo Kirk 9/27/2018

A P P E A R A N C E S

FOR THE PLAINTIFF, CHERYL CALDWELL, INDIVIDUALLY AND
ON BEHALF OF ALL OTHER SIMILARLY SITUATED:

Mr. Travis Gasper
LEE & BRAZIEL, LLP
1801 North Lamar Street, Suite 325
Dallas, Texas 75202
Phone: (214) 749-1400
gasper@l-b-law.com

FOR THE DEFENDANT, REO CONTRACTORS, INC.:

Mr. Steven E. Clark
CLARK FIRM, PLLC
10000 North Central Expressway, Suite 400
Dallas, Texas 75231
Phone: (214) 890-4066
sclark@dfwlaborlaw.com

Holly Jo Kirk 9/27/2018

1 A. Yes.

2 Q. Thank you. And for the court reporter's
3 benefit, she's taking down words but can't take down
4 uh-huhs or huh-uhs or head nods, anything like that.
5 So please try to say yes or no where appropriate.

6 Also, let's try not to talk over each
7 other. There may be times when you think you know
8 exactly where I'm going with the question. You
9 probably do; but if you can just let me get it all the
10 way to the end, that helps the court reporter, as
11 well.

12 I'm sure Steven told you this; but I may
13 ask a bad question or two that doesn't make sense.
14 That's when I want you to say please explain or
15 rephrase, and I'm happy to do that.

16 So this morning, you are here
17 representing the company REO. Do you understand that?

18 A. Yes.

19 Q. And that means that your answers to this
20 deposition are the company's answers. Does that make
21 sense?

22 A. Yes.

23 Q. Okay. So when Ms. Kirk says yes, that means
24 REO is saying yes. No means REO says no. If you say
25 "I don't know," that means the company doesn't know.

Holly Jo Kirk 9/27/2018

1 as Exhibit 2.

2 (Exhibit 2 Marked.)

3 Q. (BY MR. GASPER) I handed you Exhibit 2.
4 It's Defendant's Original Answer. If you can please
5 take a look, and then we'll talk about it.

6 A. Can I get a pen?

7 MR. CLARK: There's one if you needed
8 it.

9 THE WITNESS: Okay.

10 Q. (BY MR. GASPER) If you can just turn with me
11 to Page 3 and look at Paragraph 32. It's under the
12 heading or the section Affirmative Defenses and says
13 Defendants would show that the U.S. Department of
14 Labor determined that REO's current CSR employee(s)
15 is properly classified as salary. Did I read that
16 correctly?

17 A. Yes.

18 Q. And who is that referring to?

19 A. Our CSR would be Tracy Fox.

20 Q. And so Ms. Fox is paid a salary?

21 A. Correct.

22 Q. And exempt from overtime?

23 A. Correct.

24 Q. And that was determined by the Department of
25 Labor, correct?

Holly Jo Kirk 9/27/2018

1 A. As far as I know, yes.

2 Q. Does Ms. Fox's role as a CSR differ from the
3 role that Ms. Caldwell played as a CSR, or were they
4 doing similar job functions?

5 A. Yes, their jobs are very similar. The -- any
6 change in it would be only what has resulted from
7 declining business.

8 Q. And what changes occurred?

9 A. Right offhand, I can't -- I can't tell you.
10 I would have to look back to see.

11 Q. But day-to-day, just pretty similar?

12 A. Uh-huh.

13 Q. Flip to the next page, please, to Paragraph
14 34. It states Defendant REO would show that pursuant
15 to company policy, it kept systematic records of its
16 employees' hours of work and that there were no
17 recordkeeping or intentional violations of the FLSA.
18 Did I read that correctly?

19 A. Yes.

20 Q. What's the company's policy regarding
21 recordkeeping?

22 A. Well, I'm -- I went through the TWC audit.
23 And I asked a lot of questions at that time. And the
24 information the guy told me was their pay stubs, the
25 records, the payroll records would be my -- my

Holly Jo Kirk 9/27/2018

1 Q. But you also said that you went off of this
2 to determine her exemption status. Is that also
3 correct?

4 A. I didn't say that. I said I went off of this
5 to go off of the current CSR's exemption status.

6 Q. Okay. For reconciling the job --

7 A. Uh-huh.

8 Q. -- she's looking at the -- comparing the
9 approval and a bid. Is that what you said?

10 A. That is correct.

11 Q. Okay. Approval, who -- who -- what is she
12 approving?

13 A. Okay. I'm -- I'm -- the bank or the customer
14 because it could be a broker or it may be the bank.
15 They send in -- because they're real estate owned, you
16 usually have the banks and then you have the brokers.

17 Q. Okay.

18 A. Okay. Overall, the bank will send in the
19 approval; but it could be a smaller job. So it may
20 just be coming in or it may not even be an REO. It
21 may be coming in from the brokers. We go -- go out,
22 and we do a bid.

23 They can tell us what they want us to
24 bid on. And then if we find extra work that needs to
25 be bid on, then our estimator can list those items.

Holly Jo Kirk 9/27/2018

1 Q. It's an estimator that's listing those items?

2 A. That's correct.

3 Q. On the bid?

4 A. Uh-huh, whenever he goes out to do the bid.

5 Q. What's Ms. Caldwell's role in the bid?

6 A. Just reconcile -- I don't know that --

7 reconciling it once -- once it's approved and then.

8 she may have typed some bids up. And I know that she

9 was party to change orders. And that's a whole

10 different -- another long story.

11 Q. So she may have typed some bids up, but she's

12 not -- it's the estimator that's responsible for the

13 contents of the bid?

14 A. For the information that's in the bid that --

15 the initial bid, yes.

16 Q. Okay.

17 A. For the approval part, it is the CSR's

18 responsibility to make sure that we're not doing work

19 that we haven't gotten approval for or that we've gone

20 back to the customer to get the additional funds that

21 need -- that's needed.

22 Q. But the customer is approving it, not

23 Ms. Caldwell. Who is doing the approval?

24 A. The bank sends in an approval.

25 Q. Okay.

Holly Jo Kirk 9/27/2018

1 A. Or the customer sends in an approval once
2 we've done it, but their approval quite often won't
3 match what we bid. So it's Ms. Caldwell's position to
4 make sure that we're getting all of our money, that
5 all of our money is accounted for.

6 So there may be where they approved
7 appliances and they've only approved to have a
8 washer -- a dishwasher and a stove; but whenever they
9 send in the approval, they say, well, we want a
10 dishwasher, stove, and a microwave.

11 Q. Okay.

12 A. So they're trying to slip through that
13 microwave. Well, it's Ms. Caldwell's responsibility
14 to make sure that, oh, hey, nobody's bid for this
15 microwave; we need to go back to get more money for
16 that. That's the --

17 Q. So she's comparing the two and making sure
18 that they reconcile?

19 A. Uh-huh.

20 Q. And that makes her exempt?

21 A. That's one of the many items. It's
22 pertaining to our money. So, yes, it would be an
23 administrative type role.

24 Q. E-mail KP for copy of bid review notes, what
25 is that referring to?

Holly Jo Kirk 9/27/2018

1 A. Now, that says KP, not HK; but that's where I
2 believe on Fannie Mae -- and I don't know if it's for
3 all the banks. I do know one bank. They -- they can
4 only have one person that they send stuff to.

5 And so we have one e-mail address. They
6 don't have the capability to have multiple e-mail
7 addresses. So it would be where they're e-mailing on
8 the master of e-mail, I guess --

9 Q. Okay.

10 A. -- the review notes of what's -- what items
11 are missing, why there's adjustments, why it wouldn't
12 reconcile if there's -- if there's any there to be
13 had.

14 Q. And if there's an issue, if it doesn't
15 reconcile, what happens then?

16 A. Ms. Caldwell would notify the -- the broker,
17 I want to say. Like I said, I'm going to say it
18 again, I didn't do this part of it; so it was many,
19 many years that I -- it changed a lot.

20 She would reach out to the brokers to
21 let them know that it did not reconcile and if we
22 needed to go back for a -- a change order or get
23 approval for additional money from the broker or
24 whatever procedure they needed to take.

25 Q. And who was the one that makes that approval?

Holly Jo Kirk 9/27/2018

1 Who makes that decision?

2 A. It would be the broker of the bank, I would
3 think.

4 Q. Okay. Not Ms. Caldwell?

5 A. Only if they're going to do the work? No,
6 she would -- it would be her -- her decision to go
7 back to them to find out about it, yes.

8 Q. So sometimes she -- if it didn't reconcile,
9 sometimes she wouldn't go back to them?

10 A. I'm not sure. I -- I can't answer that.

11 Q. Because you've worked at the company 20 plus
12 years --

13 A. Okay.

14 Q. -- are CSR's expected to go back if something
15 doesn't reconcile and inflect that, or is that up to
16 them?

17 A. Ask the question again.

18 Q. If the approval and the bid don't reconcile,
19 you mentioned the CSR would go back for a change order
20 or additional approval; but it was up to them. Does
21 that mean it's up to the CSR to do that?

22 A. To go back to the --

23 Q. Yes.

24 A. -- brokers? As far as I know, yes, it was
25 standard procedure.

Holly Jo Kirk 9/27/2018

1 Q. Okay. So that's what I'm asking.

2 A. Yeah.

3 Q. That's what I'm asking.

4 A. Okay.

5 Q. And maybe -- sorry if I didn't ask it well.

6 I'm learning the lingo, too.

7 A. Right.

8 Q. But it wasn't something that the CSR decided
9 "I'm just going to pass on this one." It was
10 something that they had to go back and fix or address,
11 right?

12 A. He -- okay. Yes, I would say -- I would say
13 that's a correct statement, yes. If -- if it doesn't
14 balance, we've got to make sure that our customer is
15 happy and that our money is there, so yes.

16 Q. And Ms. Caldwell couldn't throw in a free
17 microwave, could she?

18 A. I would say no. We wouldn't stay in business
19 long giving away microwaves.

20 Q. Continuing to look at these tasks, you
21 mentioned the type recap. Tell me when you saw
22 that -- what alerted to you that being an
23 administratively exempt duty?

24 A. The type the recap is because -- it's a
25 condensed version of what the approval is, making it

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1 more user-friendly for the -- for the field so that
2 they know what is expected of them. Just like I was
3 saying earlier, something is not approved. It may
4 still show up on that bid, or it may even show on
5 approval. If it's not approved, though, we don't want
6 somebody doing that. So it was their responsibility
7 to make sure that that was omitted from a recap.

8 Q. So there are certain items that need to be
9 included in that recap; is that right?

10 A. Yes, uh-huh.

11 Q. And who decides what goes into a recap?

12 A. The CSR. The -- it's based off of the
13 approval.

14 Q. Okay. But how does the CSR know what to
15 include in the recap?

16 A. From the approval.

17 Q. Okay.

18 A. That is provided by the bank.

19 Q. And they're recapping certain pieces of the
20 approval?

21 A. No.

22 Q. You said it's condensed down. How do they
23 know what to condense it down to?

24 A. That's part of their training, that they just
25 know what's -- they know what's pertinent information.

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1 Q. Okay. As determined by the company?

2 A. As -- as the CSR, they know -- okay, they
3 need to know that there's -- and I -- I'm hesitant in
4 giving examples because I didn't do recaps; but I
5 would say for an example, it would be like you --
6 it -- you'll do Sheetrock repairs as needed. Okay.
7 Or you do 24 feet of -- 24 square feet of Sheetrock
8 repairs.

9 So they take that information from that
10 actual approval. And instead of it having -- you
11 know, you're going to do 24 feet here and you're going
12 to do 15 feet there and you're going to do, you know,
13 blah, blah, blah and put all that -- they would
14 condense it down telling the -- telling them you're
15 only going to do Sheetrock repairs as needed, not
16 giving them specifics of what area.

17 Q. Okay.

18 A. Does that kind of help?

19 Q. They know that because that's what REO wants
20 them to do as CSR's?

21 A. Well, that's what they're trained to do, yes.

22 Q. That was my question. So Ms. Caldwell is not
23 making up or deciding not what to put in the recap?

24 A. Well, she's determining what information
25 needs to go on the recap, yes.

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1 Q. Based on what?

2 A. Her own judgment of -- and her training of
3 knowing what she's supposed to be looking for.

4 Q. What kind of judgment is she using? How is
5 she using judgment?

6 A. Quite often, she uses judgment whenever she's
7 taking this line, "do I need to put this on there; do
8 I need to order this; do I not order this."

9 You know, she -- she is just like
10 whenever you take this, do I look at this and do I
11 give you every single little thing on here. You know,
12 you're using -- I'm using my judgment -- same thing
13 with the recap.

14 You take that approval, and you
15 determine what's pertinent information that needs to
16 be communicated to someone else and -- or what's not
17 pertinent.

18 Q. And how does she know what's pertinent or not
19 pertinent?

20 A. It comes from being in the industry and from
21 doing your job and knowing what you're doing.

22 Q. From the training, is that what you said,
23 also?

24 A. Yeah, from the training.

25 Q. So it comes from the company?

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1 A. Yeah, I mean you can't -- I couldn't sit you
2 in there and let you do it. I couldn't go in there
3 and sit down and do it because I haven't done it in so
4 long.

5 Q. I believe that for me. Let's look back.
6 What other of these tasks jump out at you as
7 administratively exempt?

8 A. Okay. I would say update and revise
9 Whirlpool order forms as needed.

10 Q. What kind of independent judgment or
11 discretion is Ms. Caldwell using in doing that?

12 A. Determine if there needs to be a change to
13 that -- to what appliances were supposed to be ordered
14 or not because she has the authority to order what
15 needs to be ordered.

16 Q. How would she know what needs to be ordered?

17 A. I'm going to say off of the approvals.

18 Q. So it's --

19 A. It's whatever was bid off the job, you know.

20 Q. Okay. So she's looking -- she's ordering
21 based on the approval approved by somebody else?

22 A. Okay. I would say that's a -- a correct
23 statement because it's -- the approval comes from the
24 customer.

25 Q. Okay. Anything else on this first page that

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1 you see that would be exempt duties, in your opinion?

2 A. Send e-mail to Whirlpool.

3 Q. Okay. And why is that?

4 A. Have -- because she's using discretion that
5 it's time to order the appliances.

6 Q. So she doesn't have to order the appliances?

7 A. Yeah, that's her job. That's part of her
8 administrative job.

9 Q. Okay. So where is the discretion? If she
10 has to do it, what choice does she have?

11 A. In her position, that would be part of her
12 duties to do that. So I don't -- I guess I'm not
13 understanding what your question is.

14 Q. So if Ms. Caldwell said "I have all this
15 discretion; I'm not going to send that e-mail today,"
16 what would happen?

17 A. She wouldn't send it, and she could have the
18 discretion to send it the next day so --

19 Q. What if she never sent it?

20 A. Well, she -- she wouldn't have a job because
21 that was part of her job.

22 Q. Exactly. So it was required for her to do
23 that?

24 A. As part of her position, yes, it was the
25 requirement.

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1 Q. Okay. What else?

2 MR. CLARK: Are you talking about Page 1
3 still or --

4 Q. (BY MR. GASPER) If you see anything else on
5 Page 1 that is, in your opinion, an administrative
6 task --

7 A. Okay. Send e-mail -- see, some of this
8 stuff, I'm not for sure because she's saying "send
9 e-mail if 1093 and Whirlpool order form don't match."
10 Okay.

11 "Scan Whirlpool 1093 and order form."
12 "Have Kelvin approve appliance order." Some of this
13 stuff, I was not privy to, so I'm not up to speed on
14 it. "Send MFS e-mail listing appliances for a quote."

15 Q. Sorry. Just for the record, are you just
16 reading right now? Or these are things that you think
17 are significant or exempt?

18 A. For the most part, I mean it's -- I'm reading
19 and -- I guess I'm not answering your question on
20 that, am I? I'm mainly reading. "Review MS
21 assessment for pricing and errors." I would say I am
22 answering the question on that one.

23 Q. Okay. That's an exempt function why?

24 A. Because she's going to make sure that our
25 money is there.

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1 Q. And what is she comparing the estimate to for
2 pricing?

3 A. Again, I'm assuming. I don't know.

4 Q. How would you know there's an error?

5 A. I'm not for sure because I don't -- if she's
6 checking for pricing and errors, I'm assuming that if
7 she sees -- maybe she has a price sheet from MFS
8 because she sends -- she sends them an e-mail listing
9 appliances for a quote. Okay. She states that above.
10 Okay.

11 So for the quote, whenever the estimate
12 comes in, I'm assuming she's going to verify that
13 quote against what they've sent in for their estimate.

14 Q. Okay.

15 A. And then if something doesn't match, what
16 they've estimated versus what we did. I would say
17 that that would be it.

18 Q. What would she do if something didn't match?

19 A. She would contact them. She would contact
20 whoever the -- the supplier is stating, "hey, this
21 isn't matching; you know, we need to either get it
22 corrected or have them send a credit or whatever."

23 Q. She couldn't do that on her own?

24 A. I'm sorry.

25 Q. Could she do that on her own?

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1 A. Well, no, the customer -- the vendor is going
2 to have -- you know, they're not going to want her
3 just changing prices on them.

4 Q. If she's lowering prices --

5 A. Well, we try to be pretty ethical and notify
6 them, hey, this says it's \$20 and, you know, your
7 price sheet is showing it should be 60. Cheri is
8 ethical. I don't think that she would not notify them
9 about that either because she would think there was
10 something wrong.

11 Q. That they would have to address?

12 A. Uh-huh. (Mumbling.)

13 COURT REPORTER: I'm sorry?

14 THE WITNESS: I'm reading to myself.
15 I'm sorry.

16 A. Okay. She had to gather information for a
17 change order. She would send a notice to Kindale of
18 any adjustments information or important details and
19 ECD's. That's giving somebody notification.

20 Q. (BY MR. GASPER) Okay. So -- gathering
21 information for a change order --

22 A. Uh-huh.

23 Q. -- what discretion is she using in doing
24 that?

25 A. I would say whatever is needed to make -- to

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1 A. So, yeah, I mean if she's put it down in her
2 e-mail that she did it, I would -- I would take that
3 as her having done that.

4 Q. Where does it say here that she signed off on
5 changes for less than \$100?

6 A. It's -- I don't know that it says that on
7 this e-mail. And I don't know that it says it on the
8 other e-mail, but there are other factors in there
9 that it does state things that would classify her
10 as administrative. So I don't know that that one
11 particular thing makes her just a salary exempt
12 employee.

13 Q. Okay. What else on here on this list?

14 A. Did I answer your question? Did I understand
15 your question? Okay.

16 MR. CLARK: He's moved on to --

17 Q. (BY MR. GASPER) I'll let you know.

18 A. Okay.

19 Q. Us lawyers will definitely keep talking if
20 not.

21 A. Again, we're back to change orders. You've
22 got me now gun shy on change orders. "Provide repair
23 updates for change orders." "Check in appliances."
24 "Provide repair updates for rehabs."

25 Q. And what decisions are going through

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1 Ms. Caldwell's mind as she's doing this?

2 A. Well, I don't know what Ms. Caldwell thinks
3 while she's doing things; but she's determining what
4 information needs to be relayed to our customer.

5 Q. And how do you know what information needs to
6 be relayed?

7 A. How do she know what information --

8 Q. Versus me going in there today, I have no
9 idea what to send to your customer.

10 A. Uh-huh, that's right.

11 Q. Ms. Caldwell, I assume, knew, right? How did
12 she know what went into that?

13 A. From -- from experience, from knowing what
14 the customer is going to require of her, what the
15 customer is going to ask of her, they -- the items
16 that they need to know on what the status of the job
17 is, what, you know -- they -- what the customer is
18 going to need to be able to relay to their -- to the
19 bank and information that she's gathered from the --
20 the QC, from the field people on what the status of
21 the job is, on where we're at and what is needed, what
22 needs -- if there's troubleshooting that needs to be
23 done, if there's communication that needs to be had
24 with the customer.

25 Q. So she's almost like kind of a hub, like

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1 getting -- like get -- in the middle of getting
2 information from these sources and then spitting it
3 back out, so to speak, with these provider care
4 updates?

5 A. On occasion, yes.

6 Q. I believe I cut you off before, but I don't
7 want to mess anything up here so --

8 A. Okay. "Order the flooring." "Send an e-mail
9 to the broker revising the ECD through Equator."

10 Q. Ordering the flooring --

11 A. Uh-huh.

12 Q. -- is an exempt duty?

13 A. It's an administrative duty. So yeah, it's
14 a --

15 Q. And what kind of discretionary, independent
16 judgment is Ms. Caldwell using in ordering flooring?

17 A. I'm not for sure what procedure she takes on
18 ordering the flooring.

19 Q. Okay.

20 A. So I can't answer that exactly other than
21 that would be an administrative type duty that we had.

22 Q. Do you-all have a vendor for flooring?

23 A. We do have vendors, and then we also had our
24 own -- other entity that was a flooring company that
25 we used.